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FIRST GENERAL COUNSEL'S REPORT

MUR 6207

DATE COMPLAINT FILED: 2/23/09

DATE RESPONSE RECEIVED: 8/17/09

DATE AMENDED COMPLAINT

RECEIVED: 8/10/09

DATE AMENDED RESPONSE

RECEIVED: 9/2/09

DATE ACTIVATED: 9/15/09

EXPIRATION OF SOL: 6/29/2014 – 7/6/2014

SOURCE:

Externally Generated Complaint

COMPLAINANT:

Jason A. Bezis, Esq.

RESPONDENTS:

Mark DeSaulnier

Mark DeSaulnier for Senate 2012

DeSaulnier for Congress and Rita Copeland,
in her official capacity as treasurer

Shara Perkins, Campaign Manager for
DeSaulnier for Congress

RELEVANT STATUTES AND
REGULATIONS:

2 U.S.C. § 441a(a)(1)(A)

2 U.S.C. § 441b

2 U.S.C. § 441i(e)(1)(B)

2 U.S.C. § 441i(e)(2)

2 U.S.C. § 441i(f)(1)

2 U.S.C. § 441i(f)(2)

2 U.S.C. § 441d

11 C.F.R. §109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter involves allegations that California State Senator and former Congressional candidate Mark DeSaulnier ("DeSaulnier"), Mark DeSaulnier for Senate 2012 ("State Committee"), DeSaulnier for Congress and Rita Copeland, in her official capacity as treasurer ("Federal Committee"), and Shara Perkins, campaign manager for the Federal Committee, (also collectively referred to as "Respondents") violated the Federal Election Campaign Act of 1971, as amended ("Act") in connection with two mass mailings paid for by the State Committee.

The complaint, as amended, alleges that the Respondents: 1) violated 2 U.S.C. §§ 441i(e)(1) and 441i(f)(1) by using non-federal funds for "federal election activity"; 2) violated 2 U.S.C. §§ 441a(1)(A) and 441b by making excessive and prohibited contributions via unreported coordinated communications; and 3) violated 2 U.S.C. § 441d(c)(2) by failing to comply with the Act's disclaimer requirements.

Respondents assert that the State Committee's spending by a State candidate who also happens to be a Federal candidate is explicitly exempted from the Act's restrictions pursuant to 2 U.S.C. § 441i(e)(2) and 11 C.F.R. § 300.63. *See Responses.* Respondents also assert that the mailers are not coordinated in-kind contributions, because neither the "payment prong" nor the "conduct prong" of the Commission's coordination regulations apply to communications made by a Federal candidate/officeholder, in his capacity as a State candidate. 11 C.F.R. § 109.21(b). *Id.* Finally, Respondents maintain that the mailings were State campaign materials and did not require Federal disclaimers. *Id.*

As discussed below, we conclude that DeSaulnier and the State Committee improperly spent non-federal funds in connection with one of the mailers that does not

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1 fall within the state candidate exception and also appears to meet the definition of federal
2 election activity. In addition, we conclude that the two mailers did not constitute an
3 excessive or prohibited in-kind contribution because the Commission has concluded that
4 disbursements made by a Federal candidate's campaign for State office are not
5 coordinated pursuant to 11 C.F.R. § 109.21. Further, we conclude that the content of the
6 mailers did not require a disclaimer under the Act. 2 U.S.C. 441d(c)(2).

7 We recommend that the Commission: 1) find reason to believe that Mark
8 DeSaulnier violated 2 U.S.C. § 441i(e)(1)(B) with regard to one mailer; 2) find reason to
9 believe that Mark DeSaulnier and Mark DeSaulnier for Senate 2012 violated 2 U.S.C.
10 § 441i(f)(1) with regard to the same mailer; 3) find no reason to believe that DeSaulnier
11 for Congress and Mark DeSaulnier for Senate 2012 violated 2 U.S.C. §§ 441a or 441b
12 by making excessive or prohibited in-kind contributions via coordinated expenditures;
13 4) find no reason to believe that Mark DeSaulnier and DeSaulnier for Congress accepted
14 excessive or prohibited contributions in violation of 2 U.S.C. §§ 441a(f) or 441b or failed
15 to report such contributions in violation of 2 U.S.C. 434(b); 5) find no reason to believe
16 that Mark DeSaulnier for Senate 2012 violated 2 U.S.C. § 441d; and lastly 6) find no
17 reason to believe that Shara Perkins, campaign manager for DeSaulnier for Congress,
18 violated any provision of the Act or regulations.

19 **II. FACTUAL SUMMARY**

20 DeSaulnier is a California State Senator representing the 7th District who was
21 originally elected to office in November 2008, and was a declared candidate for
22 re-election to the State Senate in 2012. See Amended Response Attachments. On or

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1 about March 26, 2009, DeSaulnier announced his intent to run for the soon-to-be-vacated
2 seat in California's 10th Congressional District. See Amended Response.

3 During the 90-day period prior to the September 1, 2009, special primary election
4 for the 10th Congressional District nomination, the State Committee sent two mailings
5 entitled "Your Health Services Guide: Courtesy of Senator Mark DeSaulnier" (also
6 referred to as "Health Services Guide"), and "PARENTS GUIDE TO: A Safe and
7 Healthy Family by Senator Mark DeSaulnier" (also referred to as "Parents Guide") to
8 voters in the overlapping California State Senate district and the 10th Congressional
9 district. See Responses. Although neither the complaint nor the response indicates the
10 amount spent on the mailers, the State Committee's disclosure reports show two
11 payments to Shallman Communications on June 25, 2009 for campaign literature and
12 mailings (\$51,885.20) and postage, delivery and messenger services (\$30,016.15).¹

13 A. The "Health Services Guide" Mailer

14 On or about June 29, 2009, the State Committee sent a twelve-page Health
15 Services Guide to voters in the overlapping State Senate district and the 10th
16 Congressional District. See Complaint, Exhibit C. The guide, which includes several
17 pictures of DeSaulnier, lists health care resources within the State of California and
18 describes DeSaulnier's involvement, as a state legislator, in health care issues. *Id.* The
19 Health Services Guide contains two pages that reference President Obama and the current
20 federal health care reform efforts. See Complaint, Exhibit C. One page also contains a
21 small photograph of President Obama speaking to Congress with Vice-President Biden

¹ See <http://cal-access.sos.ca.gov/PDFGen/pdfgen.asp?filingid=1438141&amendid=0> for disclosure report filed with the California Fair Political Practices Commission.

1 and Speaker Nancy Pelosi standing behind him. *Id.* The mailer also contains a letter
2 from DeSaulnier discussing the importance of pending federal health care legislation and
3 the need for "concerned citizens like you" and "leaders at all levels of government" to
4 "stand behind him (Obama), and help him achieve this critical goal for our country." *See*
5 Complaint, Exhibit C.

6 The back cover of the mailer includes a photograph of DeSaulnier and California
7 State Senator Tom Torlakson (11th District)² with the following endorsement: "Mark
8 DeSaulnier is a natural leader, an independent thinker and a coalition builder who brings
9 people together to get things done. He has invaluable real world experience as a small
10 businessman that consistently and positively informs his work for the people of this
11 district." *Id.* The mailer indicates it was paid for by the State Committee.

12 Complainant alleged that DeSaulnier, as a Federal candidate, violated 2 U.S.C.
13 § 441i(e)(1) because the Health Services Guide, which was paid for with non-federal
14 funds, does not meet the stated requirements of the exception allowed by 2 U.S.C.
15 § 441i(e)(2) for communications that are solely in connection with the State candidate's
16 election that do not mention any candidate other than one for the same State election. *See*
17 Complaint. The Complainant alleged that the mailer "tends to promote" President
18 Obama, Vice-President Biden, Speaker of the House Pelosi, and DeSaulnier as Federal
19 candidates, and that it also references Torlakson, a non-federal candidate who is not a
20 candidate for the same office DeSaulnier seeks as a State candidate. *Id.*

21
22

² Torlakson is currently in his last term as State Senator for the 11th District of California and is a candidate
for election for the California Superintendent for Public Instruction in 2010.

B. The "Parents Guide" Mailer

On or about July 6, 2009, the State Committee sent a twenty-page mailer, the Parents Guide, to the same geographic area as the first mailer. *See* Complaint, Exhibit D. The mailer opens with a letter from DeSaulnier, in his State Senate capacity, telling of his work with health, education, and public safety experts in compiling a list of useful tips – "a no-nonsense, handy guide ... for keeping our children safe, healthy, and prepared for life's emergencies. *Id.* It provides general family health and safety information and contact information for different federal and state health agencies in California. In addition, it includes quotations from DeSaulnier regarding the health, education, and public safety of children. *Id.* The mailer indicates that it was paid for by the State Committee.

The complaints alleged that the Parents Guide contains "federal election activity" in violation of 2 U.S.C. § 441i(f). *See* Complaints. Complainant claimed that DeSaulnier and his State Committee do not meet the exception requirements of Section 441i(f)(2) because the timing of the mailer is an indication that it was intended to benefit DeSaulnier's Federal campaign and not his State re-election three years in the future. *Id.*

III. LEGAL ANALYSIS

There are four issues to consider in this matter. First, did DeSaulnier, as a Federal candidate, spend non-federal funds through his State campaign in a way that did not fit the exception allowed for his State re-election effort, in violation of Section 441i(e)(1) of the Act? Second, did DeSaulnier, as a State candidate, and his State Committee spend State funds on "federal election activity" contained in the two mailers, in violation of Section 441i(f)(1)? Third, did the State Committee and Federal Committee engage in

1 coordination in connection with the two mailers distributed by the State Committee
2 pursuant to 11 C.F.R. § 109.21 and fail to report said coordinated expenditures in
3 violation of 2 U.S.C. § 434(b)? Fourth, was the State Committee required to comply with
4 the disclaimer requirements pursuant to 2 U.S.C. § 441d(c)(2)?

5 A. 2 U.S.C. § 441i(e)(1)(B)

6 The Act prohibits a Federal candidate or officeholder, or their agents, from
7 spending or disbursing funds in connection with any election other than for Federal
8 office, unless the funds are consistent with State law and subject to the limitations,
9 prohibitions, and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R.
10 § 300.62.

11 The Act, however, provides for an exception to Section 441i(e)(1)(B) for a
12 Federal candidate, an officeholder who is also a candidate for State or local office, or an
13 agent of either, if the solicitation, receipt or spending of funds is solely in connection
14 with that candidate's election to State or local office, is permitted under State law, and
15 refers only to that State or local candidate, to any other candidate for that same State or
16 local office, or both. 2 U.S.C. § 441i(e)(2); 11 C.F.R. § 300.63 (emphasis added).

17 1. "Health Services Guide"

18 DeSaulnier was subject to 2 U.S.C. § 441i(e)(1)(B) because he was a candidate
19 for Federal office at the time he spent funds through his State Committee for the
20 distribution of the mailers. Moreover, DeSaulnier's spending of funds in relation to the

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1 Health Services Guide does not fall within the exception found in 2 U.S.C. § 441i(e)(2)
2 and 11 C.F.R. § 300.63.³

3 To be eligible for the exception for spending solely in connection with the
4 candidate's election to State office, the communication must refer only to such State
5 candidate, or to any other candidate for State office sought by such candidate, or both.
6 2 U.S.C. § 441i(e)(2), 11 C.F.R. § 300.63. While the mailer focuses on DeSaulnier, in
7 his capacity as a State Senator and candidate for re-election, it also contains the likeness
8 of Federal candidate Congresswoman Nancy Pelosi⁴ and references Toriakson, a
9 candidate for a State office different from the one sought by DeSaulnier. See Complaint.

10 Because the mailer refers to candidates (Pelosi and Toriakson) other than
11 DeSaulnier's opponent for State office, the terms of the exception are not met.
12 Accordingly, funds used to pay for the communication should have been only those
13 subject to the reporting requirements and contribution limitations and prohibitions of the
14 Act. See 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R. § 300.62.

15 The State Committee's reports to the California Fair Political Practices
16 Commission indicate that it received contributions from corporations and labor unions,
17 which are permitted by California law, but are not be permitted under the Act.⁵ 2 U.S.C.

³ Although Respondents argue that the Health Services Guides does not promote, attack, support or oppose ("PASO") Federal candidates, section 441i(e)(2) does not contain a PASO requirement. PASO is a requirement with respect to Section 441i(f)(2) and Section 300.72. We will discuss the standards for satisfying the exception in Section 300.72 and the Respondents' argument in section III.B. of the Report.

⁴ Although this mailer includes a photograph of Obama and Biden and a quotation from Obama regarding universal health care, neither Obama nor Biden are "candidates" as that term is defined by section 431(2). 2 U.S.C. § 431(2). However, the presence of the photograph and the Obama quotation would still be problematic even if there were no reference to Pelosi or Toriakson because section 300.63 makes it clear that the mailer could only include references to DeSaulnier, the State candidate, and/or his opponent for the same State office. See 11 C.F.R. § 300.63.

⁵ See <http://cal-access.ss.ca.gov/PDFGen/pdfgen.php?fileid=1438141&amendid=0>.

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1 § 441b. Therefore, the funds the State Committee used to pay for the mailer did not
2 conform to the Act's limitations, prohibitions and reporting requirements. Accordingly,
3 we recommend that the Commission find reason to believe that Mark DeSaulnier violated
4 Section 441i(e)(1)(B).

5 2. "Parents Guide"

6 Unlike the Health Services Guide, we believe that DeSaulnier and the State
7 Committee's spending of funds for the Parents Guide meets the exception set forth in
8 2 U.S.C. § 441i(e)(2) and 11 C.F.R. § 300.63. The Parents Guide does not refer to any
9 candidate other than DeSaulnier, and is connected to his position as a state officeholder
10 and state candidate. Because DeSaulnier, as a State candidate, meets the exception,
11 neither he nor his State Committee was required to spend funds on the mailer that
12 conformed to the Act's limitations, prohibitions, and reporting requirements.

13 Complainant asserted that given the proximity in time to the Federal election in
14 comparison to the State election, the distribution of the mailers is suspicious, at best.
15 We have reviewed the pertinent legislative history and can find no indication that
16 Congress intended to impose a restriction on the timing of the expenditure or receipt of
17 funds in connection with a State or local election as set forth in Section 441i(e). *See, e.g.,*
18 148 Cong. Rec. S2096-02 (March 20, 2002). While we agree that the timing of the
19 mailers (90 days before the Federal special election) might lead one to reasonably
20 conclude that the mailers were intended to benefit DeSaulnier's Federal candidacy, there
21 is no basis in the Act or regulations to prevent Respondents from availing themselves of
22 the Section 441i(e) exception if the requirements are satisfied. *See* 2 U.S.C.

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1 §§ 441i(e)(1)(B) and 441i(e)(2); 11 C.F.R. §§ 300.62 and 300.63. Accordingly, the
2 Parents Guide does not violate 2 U.S.C. § 441i(e)(1)(B).

3 B. 2 U.S.C. § 441i(f)

4 The Act prohibits a candidate for State or local office, an individual holding State
5 or local office, or an agent of such a candidate or individual from spending any funds for
6 a public communication described in section 301(20)(A)(iii)(2 U.S.C. § 431(20)(A)(iii))
7 unless the funds are subject to the limitations, prohibitions, and reporting requirements of
8 this Act. 2 U.S.C. § 441i(f)(1); 11 C.F.R. § 300.71. Section 431(20)(A)(iii) is part of the
9 definition of "federal election activity" and includes public communications, such as the
10 mailings at issue here, that refer to a clearly identified candidate for Federal office and
11 that promote, attack, support, or oppose ("PASO") a candidate for that office, regardless
12 of whether the communication expressly advocates a vote for or against a candidate.
13 2 U.S.C. § 431(20)(A)(iii).

14 Section 441i(f)(2) provides that the prohibition set forth in Section 441i(f)(1) shall
15 not apply if the communication involved is in connection with an election for such State
16 or local office and refers only to such individual or to any other candidate for the State or
17 local office held or sought by such individual, or both, but does not PASO any candidate
18 for Federal office. 2 U.S.C. § 441i(f)(2); 11 C.F.R. § 300.72.

19 1. "Health Services Guide"

20 The Health Services Guide does not satisfy the 441i(f)(2) exception because it
21 both refers to other federal and state candidates (Pelosi and Torlakson), and it promotes
22 or supports DeSaulnier, a clearly identified candidate for Federal office, through

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1 Torlakson's endorsement of DeSaulnier's qualifications. *See* Original Complaint,

2 Exhibit D. The endorsement reads:

3 Mark DeSaulnier is a natural leader, an independent thinker
4 and a coalition builder who brings people together to get things
5 done. He has invaluable real world experience as a small businessman
6 that consistently and positively informs his work for the people of this
7 district.

8
9 In AO 2009-26 (Coulson), the Commission provided guidance as to when a
10 federal candidate's State Committee or State Office Account could pay for a
11 communication ("health care legislative update" letter) without violating 2 U.S.C.
12 § 441i(f). *See* AO 2009-26. The Commission concluded that a state officeholder could
13 use non-federal funds to pay for a communication which did not PASO a candidate for
14 Federal office because the communication was solely as part of Representative Coulson's
15 State officeholder duties, did not solicit any donations nor did it expressly advocate
16 Coulson's election, or the defeat of her opponents. *Id.* at 8.⁶

17 The Commission stated that the Coulson letter contained the following phrases
18 that could be construed to PASO Representative Coulson: (1) "I have remained
19 committed to making progress for the residents of this State;" and (2) "I will continue to
20 look for innovative ideas to help improve" the health care system in Illinois, as well as
21 help improve the lives of those who need our care" (emphasis added). However, it
22 concluded that those adjectives were used to "address Coulson's past and ongoing

⁶ The Commission also reached a similar conclusion regarding a postcard announcing a Seniors' fair. The Commission concluded that the postcard would not promote an event in connection with any Federal or non-federal election under 2 U.S.C. §§ 441i(e). *Id.* at 7. As part of its analysis, the Commission stated that the postcard clearly identified a Federal candidate pursuant to 2 U.S.C. § 431(18) because it identified Coulson by name and included her photograph; and constituted a "mass mailing" and "public communication" under the Act. *Id.*

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1 legislative actions as a State officeholder" rather than her qualities as a candidate. *Id.* at
2 9.

3 In contrast, the Torlakson endorsement from the Health Services Guide contains
4 language that more generally promotes DeSaulnier's personal characteristics and
5 qualities as a candidate. See Complaint, Exhibit C. Further, the mailer does not meet the
6 requirements of the 441i(f)(2) exception because it refers to other candidates (Pelosi and
7 Torlakson) for offices other than the one sought by DeSaulnier. Accordingly, the funds
8 used by DeSaulnier and his State Committee to pay for the communication should have
9 been only those subject to the reporting requirements, contribution limitations and
10 prohibitions of the Act, and they were not. See 2 U.S.C. § 441i(f)(1); 11 C.F.R. § 300.71,
11 and fn 5. Accordingly, we recommend that the Commission find reason to believe that
12 Mark DeSaulnier and the State Committee violated 2 U.S.C. § 441i(f)(1).

13 2. "Parents Guide"

14 While the Parents Guide does clearly identify DeSaulnier as a State
15 candidate/officeholder and a Federal candidate, the Commission has advised that the
16 mere identification of an individual who is a Federal candidate does not, in itself,
17 promote, support, attack or oppose that candidate. See, e.g., Advisory Opinions 2009-26
18 (Coulson), 2007-34 (Jackson) and 2003-25 (Weinzapfel). Therefore, we conclude that as
19 to the Parents Guide, DeSaulnier and the State Committee satisfy the requirements of the
20 441i(f)(2) exception, and thus the funds spent by DeSaulnier and the State Committee are
21 not required to be funds subject to the reporting requirements, and contribution

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1 limitations and prohibitions of the Act.⁷ 2 U.S.C. § 441i(f)(2). Accordingly, the Parents
2 Guide does not violate 2 U.S.C. § 441i(f)(1).

3 **C. Coordination Analysis**

4 The Act, as amended by BCRA, provides that no person shall make contributions
5 to any candidate and his or her authorized political committee with respect to any election
6 for federal office, which, in the aggregate, exceed \$2,400. 2 U.S.C. § 441a(a)(1)(A).
7 Further, candidates and political committees are prohibited from knowingly accepting
8 any contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f).

9 Commission regulations set forth a three-prong test to determine whether a
10 payment for a communication is an in-kind contribution as a result of coordination
11 between the person making the payment and the candidate. See 11 C.F.R.
12 § 109.21(a)(1)-(3). Under the first prong of the "coordinated communication" definition,
13 a communication is only subject to the regulations if it "is paid for in whole or in part, by
14 a person *other than that candidate*, authorized committee, or political party committee."
15 11 C.F.R. § 109.21(a)(1) (emphasis added).⁸

16 At issue is whether the State Committee mailings were coordinated with the
17 Federal Committee. If so, the costs of the mailers would be in-kind contributions from
18 the State Committee to the Federal Committee, and in excess of the contribution

⁷ As noted earlier at pages 9-10, there is nothing to indicate that Congress intended to impose a time restriction on a simultaneous State candidate/Federal candidate and the manner in which such a candidate expends or receives funds for public communications pursuant to Section 441i(f). Therefore, it appears that the Section 441i(f)(2) exception is available to the Respondents.

⁸ The Commission is currently engaging in rulemaking on the coordinated communication regulations. However, to date, there are no proposed changes to the payment prong of the coordinated communication analysis.

1 limitations at 2 U.S.C. § 441a(a)(1)(A). The Federal Committee would also have been
2 required to report such in-kind contributions pursuant to 2 U.S.C. § 434.

3 In this matter, both mailers were paid for by DeSaulnier's State Committee.
4 Thus, this situation is similar to the situation presented in the recent Coulson AO.⁹ In that
5 advisory opinion, the Commission concluded that the payment prong was not met if
6 Representative Coulson's State Office Account or State Campaign Committee paid for
7 the postcards promoting a seniors' fair, because Representative Coulson and her agents
8 were paying for these communications. *Id.* at 5, 7-8. *See also* Advisory Opinion 2007-1
9 (McCaskill). Similarly, in the present matter, the communications were paid for by the
10 candidate or his agents, and therefore, the payment prong is not satisfied. Accordingly,
11 we conclude that the two mailings distributed by the State Committee do not constitute
12 coordinated communications pursuant to 11 C.F.R. § 109.21.¹⁰ We recommend that the
13 Commission find no reason to believe that the State Committee made or that the Federal
14 Committee violated 2 U.S.C. §§ 441a or 441b by making or accepting an excessive or
15 prohibited in-kind contribution in the form of coordinated expenditure.

16 **D. Campaign Manager**

17 As to Shara Perkins, the amended complaint vaguely alleged that she violated the
18 Act without providing any specific basis. There is no information in the record to

⁹ The Commission relied upon Advisory Opinion 2007-01 (McCaskill) in reaching its conclusions regarding the Coulson Advisory Opinion. The Commission's vote was 4-2 in approving this Advisory Opinion, with Chairman Walther and Commissioner Bauerly dissenting.

¹⁰ For purposes of this Report, we need not address whether the other requirements are met for coordinated communications since we have concluded that the payment prong is not satisfied. For the sake of completeness, we note that it appears that both the content and conduct prongs would have been satisfied had we been required to reach these questions. Both mailings appear to have been distributed by the State Committee within 90 days of the special election. *See* 2 U.S.C. § 109.21(e)(4)(I). In addition, the available information suggests that the mailings were created, produced, and distributed at DeSaulnier's request or suggestion. *See* 2 U.S.C. § 109.21(d)(1).

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1 indicate that Ms. Perkins has violated any provision of the Act or regulations.

2 Accordingly, we recommend that the Commission find no reason to believe that

3 Ms. Perkins violated any provision of the Act and close the file as to this respondent.

4 **E. Disclaimer**

5 The complaint alleged that the State Committee violated the disclaimer

6 requirements by failing to place the disclaimers for the two mailers in printed boxes set

7 apart from the rest of the communication as required by Section 441d(c)(2). *See also*

8 11 C.F.R. § 110.11(c)(2). Section 441d(c)(2) provides that disclaimers are required for

9 1) any public communication, including electronic mail and internet website, made by a

10 political committee and 2) for any public communication by "any person" that expressly

11 advocates, solicits contributions or constitutes electioneering communications. 2 U.S.C.

12 441d(c)(2); *see also* 11 C.F.R. § 110.11(a)(1) - (4).

13 Neither criterion is satisfied in this matter. The State Committee does not meet

14 the definition of a political committee. The Act defines a "political committee" as any

15 committee, club, association, or other group of persons that receives "contributions" or

16 makes "expenditures" for the purpose of influencing a federal election which aggregate in

17 excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The courts have further

18 limited the definition to organizations whose major purpose is to engage in federal

19 campaign activity. The State Committee has not made an expenditure for a public

20 communication that expressly advocates either under 11 C.F.R. § 100.22(a), or the

21 broader definition at 11 C.F.R. § 100.22(b). *See Political Committee Status;*

22 *Supplemental Explanation and Justification*, 72 Fed. Reg. at 5606. Further, the State

23 Committee lacks the "major purpose" of engaging in federal election activity. *See*

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Political Committee Status: Supplemental Explanation and Justification. 72 Fed. Reg.
5595, 5597, 5601 (Feb. 7, 2007); *see also* *FEC v. Massachusetts Citizens for Life*, 479
U.S. 238, 262 (1986). In addition to not being a federal political committee, the State
Committee's mailers did not trigger a disclaimer requirement by expressly advocating the
election or defeat of a federal candidate.

Accordingly, we recommend that the Commission find no reason to believe that
the State Committee violated 2 U.S.C. § 441d.

We believe that a formal investigation is not required to establish the facts
described in this Report,

V. RECOMMENDATIONS

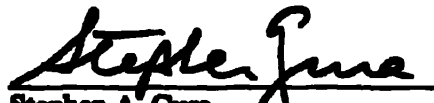
1. Find reason to believe that Mark DeSaulnier violated 2 U.S.C.
§ 441i(e)(1)(B);


2. Find reason to believe that Mark DeSaulnier and Mark DeSaulnier for Senate 2012 violated 2 U.S.C. § 441i(f)(1);
3. Find no reason to believe that DeSaulnier for Congress and Mark DeSaulnier for Senate 2012 violated 2 U.S.C. §§ 441a or 441b by making or accepting excessive or prohibited contributions as a result of coordinated expenditures;
4. Find no reason to believe that Mark DeSaulnier for Senate 2012 violated 2 U.S.C. § 441d;
5. Find no reason to believe that Shara Perkins, campaign manager for DeSaulnier for Congress, violated any provision of the Act or regulations and close the file as to this respondent;
6. Approve the attached Factual and Legal Analysis;
7.
8.
9. Approve the appropriate letters.


Thomasenia P. Duncan
General Counsel

3/16/10
Date

BY:


Stephen A. Gura
Deputy Associate General Counsel
for Enforcement


Mark A. Shonkwiler
Assistant General Counsel


Kimberly D. Hart
Attorney